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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 GUILLERMO VERA,) No. C 13-02146 EJD (PR)
12 Plaintiff,) ORDER OF DISMISSAL
13 v.)
14)
15 CONNIE GIPSON, et al.,)
16 Defendants.)
17

18 Plaintiff, a California inmate at the Corcoran State Prison (“CSP”), filed the instant
19 civil rights action in pro se pursuant to 42 U.S.C. § 1983 against CSP officials. For the
20 reasons discussed below, this case is DISMISSED without prejudice for failure to exhaust
21 administrative remedies.
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DISCUSSION

24 The Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321
25 (1996) (“PLRA”) provides: “No action shall be brought with respect to prison conditions
26 under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail,
27 prison, or other correctional facility until such administrative remedies as are available
28 are exhausted.” 42 U.S.C. § 1997e(a). Exhaustion is mandatory and not left to the

1 discretion of the district court. Woodford v. Ngo, 548 U.S. 81, 84 (2006). Exhaustion is
2 a prerequisite to all prisoner lawsuits concerning prison life, whether such actions involve
3 general conditions or particular episodes, whether they allege excessive force or some
4 other wrong, and even if they seek relief not available in grievance proceedings, such as
5 money damages. Porter v. Nussle, 534 U.S. 516, 524 (2002). All available remedies
6 must be exhausted; those remedies “need not meet federal standards, nor must they be
7 ‘plain, speedy, and effective.’” Id. (citation omitted). Even when the prisoner seeks relief
8 not available in grievance proceedings, notably money damages, exhaustion is a
9 prerequisite to suit. Id.; Booth v. Churner, 532 U.S. 731, 741 (2001). Prisoners cannot
10 avoid the administrative exhaustion requirement by requesting relief not available in the
11 appeals system, such as monetary relief, or by simply declaring the process futile. The
12 exhaustion requirement requires “proper exhaustion” of all available administrative
13 remedies. Ngo, 548 U.S. at 93. Because exhaustion under § 1997e(a) is an affirmative
14 defense, a complaint may be dismissed for failure to exhaust only if failure to exhaust is
15 obvious from the face of the complaint and/or any attached exhibits. Wyatt v. Terhune,
16 315 F.3d 1108, 1119-20 (9th Cir. 2003). The Court may dismiss a complaint for failure
17 to exhaust where the prisoner “conce[des] to nonexhaustion” and “no exception to
18 exhaustion applies.” Id. at 1120.

19 Here, Plaintiff indicated on the complaint that his grievance is “pending” at the
20 third formal level of appeal. (Compl. at 2.) Plaintiff also failed to indicate whether the
21 last level to which he appealed was the highest level of appeal available. (Id.) Plaintiff
22 must comply with the PLRA’s requirement of “proper exhaustion” under Ngo: “Proper
23 exhaustion demands compliance with an agency’s deadlines and other critical procedural
24 rules because no adjudicative system can function effectively without imposing some
25 orderly structure on the course of its proceedings.” 548 U.S. at 90-91 (footnote omitted).
26 As it is clear that Plaintiff has not “properly exhausted” his claims by pursuing all levels
27 of administrative review available to him before filing the instant action, and there is no
28 applicable exception to the exhaustion requirement, dismissal without prejudice is

1 appropriate.

2 The Court notes that the Plaintiff writes most of his complaint in Spanish. In the
3 future, Plaintiff is advised that all pleadings must be written in English in order for this
4 Court to properly adjudicate any matters.

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6 **CONCLUSION**

7 For the foregoing reasons, this action is hereby DISMISSED, without prejudice to
8 Plaintiff's refiling his claims after all available administrative remedies have been
9 exhausted.

10
11 DATED: 10/16/2013


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

GUILLERMO VERA,
Plaintiff,

Case Number: CV13-02146 EJD

CERTIFICATE OF SERVICE

v.

CONNIE GIPSON, et al.,
Defendants.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 10/17/2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Guillermo Vera K-73387
Corcoran State Prison
P. O. Box 3476
Corcoran, CA 93212

Dated: 10/17/2013

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk